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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 RONALD D. ALLEN, JR., et al.,

12 Plaintiffs,

13 vs.

14 ROBERT H. SMITH; LEROY H.
15 MIRANDA, JR.; KILMA S. LATTIN;
16 THERESA J. NIETO; DION PEREZ,

Defendants.

CASE NO. 12cv1668-WQH-KSC

ORDER

17 HAYES, Judge:

18 The matter before the Court is the Amended Motion to Dismiss (ECF No. 17) filed by
19 Defendants Robert H. Smith, Leroy H. Miranda, Jr., Kilma S. Lattin, Theresa J. Nieto and
20 Dion Perez (“Defendants”).

21 **PROCEDURAL BACKGROUND**

22 On July 3, 2012, twenty-seven former members of the Pala Band of Mission Indians
23 (“Plaintiffs”) filed a Complaint against Defendants, seeking monetary damages and declaratory
24 and injunctive relief. (ECF No. 1). Plaintiffs assert the following claims for relief to remedy
25 their disenrollment from the Pala Tribe: (1) conspiracy to interfere with civil rights, in
26 violation of 42 U.S.C. § 1985(3); (2) deprivation of equal rights under the law, in violation of
27 42 U.S.C. § 1981; (3) conversion; (4) tortious interference with prospective economic
28 advantage; (5) defamation; and (6) civil conspiracy. *Id.* at 56-61.

On August 30, 2012, Defendants filed the Amended Motion to Dismiss¹ (hereinafter “Motion to Dismiss”) pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6) and 12(b)(7). (ECF No. 17). On October 15, 2012, Plaintiffs filed an opposition. (ECF No. 18). On October 29, 2012, Defendants filed a reply. (ECF No. 23).²

On March 1, 2013, the Court held oral argument on the Motion to Dismiss. (ECF No. 35).

ALLEGATIONS OF THE COMPLAINT

“Pala is located on a 12,000-acre reservation east of Interstate 15 and south of Temecula.” (ECF No. 1 at 22). Plaintiffs are descendants of Margarita Britten, who was identified on the Pala Band of Mission Indians’ (“Pala Tribe”) original 1913 allotment roll as 4/4 degree Pala Indian blood. *Id.* at 23. The Pala Tribe “is supposed to be governed by its General Council, consisting of all adult members eighteen years and older. The General Council elects an Executive Committee comprised of six elected officials with two-year terms that includes the chairman, vice chairman, treasurer, secretary, and two council persons.” *Id.*

On November 6, 1960, the Pala Tribe officially adopted the Pala Articles of Association, previously approved by the Commissioner of Indian Affairs on March 7, 1960. *Id.* Section 2(A) of the Articles of Association, which defined tribal membership, provided:

(1) Those persons whose names appear on the Pala Allotment Rolls as approved by the Secretary of the Interior on April 12, 1895, and November 3, 1913, who are living on the date of approval by the Commissioner of Indian Affairs;

¹On August 29, 2012, Defendants filed a Motion to Dismiss. (ECF No. 16). The following day, Defendants filed the Amended Motion to Dismiss, which states: “Document amended only to correct formatting errors caused in PDF conversion.” (ECF No. 17 at 1).

²On December 17, 2012, Plaintiffs filed a Notice of Recent Authorities in Support of Plaintiffs’ Opposition to Defendants’ Motion to Dismiss. (ECF No. 26 (citing *Vann v. U.S. Dep’t of Interior*, 701 F.3d 927, 928 (D.C. Cir. 2012); *Maxwell v. Cnty. of San Diego*, 697 F.3d 941 (9th Cir. 2012))). On December 19, 2012, Defendants filed an opposition. (ECF No. 28).

On February 19, 2013, Plaintiffs filed a Notice of Additional Recent Authorities in Support of Plaintiffs’ Opposition to Defendants’ Motion to Dismiss. (ECF No. 31 (citing *Maxwell v. County of San Diego*, 10-56671, 2013 WL 542756 (9th Cir. Feb. 14, 2013); *Salt River Project Agr. Imp. & Power Dist. v. Lee*, CV-08-08028-PCT-JAT, 2013 WL 321884 (D. Ariz. Jan. 28, 2013))). On February 22, 2013, Defendants filed an opposition. (ECF No. 33).

(2) All living descendants of persons on the Allotment Rolls covered in Section 2.A(1) regardless of whether the original allottees are living or deceased, provided that such descendants have one-sixteenth (1/16) or more degree of Indian blood of the Band;

(3) Those persons who have been adopted by the Band and such adoption has been approved by the Bureau of Indian Affairs.

Id. at 22-23.

On November 26, 1961, the Pala Tribe enacted an enrollment ordinance which established “regulations and procedures governing the enrollment of members into the Tribe and to maintain the roll on a current basis (the ‘Original Enrollment Ordinance’).” *Id.* at 23. The Original Enrollment Ordinance “provided numerous safeguards regarding enrollment and membership in Pala.” *Id.* Pursuant to the Original Enrollment Ordinance:

[A]ny person whose application for Pala membership had been rejected by the Executive Committee [of the Pala tribe] could appeal to the Area Director of the BIA. The Area Director shall forward to the Commissioner of Indian Affairs the appeal, supporting data, his recommendation, and the report and recommendation of the Executive Committee. If the Commissioner determines that the appellant is not eligible for enrollment, he shall notify the appellant in writing of his decision and the reasons therefor. If the application is rejected by the Commissioner, the appellant has 30 days from the mailing of the notice to file an appeal with the Secretary of the Interior, whose decision on appeal shall be final and conclusive.

Id.

“[I]n the 1980s, after a thorough and extensive investigation – including a review of sworn statements, government records, family history cards, and other evidence – the Bureau of Indian Affairs (‘BIA’) ... ruled that Margarita Britten was a full-blooded Pala Indian. The BIA has repeatedly reiterated its conclusion that this ruling *was final*.” *Id.* at 9. In 1984, “Pala’s General Council ... voted on and approved a resolution to correct Margarita Britten’s blood degree to reflect that she was a full-blooded Pala Indian.” *Id.*

In 1987, Defendant Robert H. Smith “became Chairman of the Pala Tribe.” *Id.* Defendant Smith, as Chairman, “began to take actions to secure his power over the Tribe and its members, particularly as the Tribe became involved in Indian gaming and became wealthy from casino money.” *Id.*

On November 22, 1994, the Pala Tribe “revised its Articles of Association into a

1 constitution, as [Defendant] Smith convinced the Tribe that it was necessary to do so in order
 2 for Pala to participate in Indian gaming.” *Id.* In June of 1995, the Bureau of Indian Affairs
 3 (“BIA”) reviewed the proposed constitution, which it “returned with recommendations for
 4 consideration.” *Id.* at 23-24. “On or about November 1997, a final draft of the revised
 5 constitution was completed.” *Id.* at 24.

6 On November 19, 1997, Resolution 97-36 “was passed ... to ‘adopt the Pala Tribal
 7 Constitution [hereinafter ‘Constitution’] to supersede the Articles of Association.” *Id.*
 8 Resolution 97-36 “was only approved by a vote of 27 ‘For’ and 0 ‘Against’ in a Special
 9 Meeting – barely satisfying the quorum of at least 25 voters necessary to validate actions by
 10 the General Council.” *Id.* at 25.

11 “[P]ursuant to the Indian Reorganization Act [of 1934 (‘IRA’)] and the Pala’s
 12 Constitution itself, approval by a majority of the voters in a duly called election was required
 13 for Pala’s Constitution to become effective.” *Id.* at 24-25 (quoting 25 U.S.C. § 476(a)). Prior
 14 to disenrollment of Britten’s descendants, the Pala Tribe “had approximately 900 enrolled
 15 members.” *Id.* at 22. “[A]pproval by at least 300 or so adult voters would have been necessary
 16 to ratify the Constitution.” *Id.* at 25.

17 Since Pala’s Constitution was not ratified by a majority vote of the adult
 18 members of Pala, it is invalid. Indeed, in response to a Freedom of Information
 19 Act (‘FOIA’) request to the BIA for any documents ‘proving compliance with
 20 Section 476(a) described above, including the date a special election was
 21 authorized, called and conducted by the Secretary that resulted in the ratification
 22 of the Tribe’s Constitution,’ the BIA responded that it could not locate any such
 documents after having conducted a thorough search of its files – thus
 confirming that no such election to ratify the Pala Constitution had occurred.
 Because a majority vote ratifying Pala’s Constitution did not occur, the
 Constitution was not properly adopted by the Tribe and therefore is not the
 governing document of the Tribe. Instead, Pala is still governed by its original
 Articles of Association.

23 *Id.* “The fact that Pala’s Constitution is invalid is substantiated by other evidence.” *Id.* For
 24 example, “Pala’s Tribal Gaming Ordinance enacted on February 14, 2000 states that the Tribe
 25 is governed by its Articles of Association, not by its Constitution....” *Id.* The Pala Tribe’s
 26 website, “as recently as February 2012, ... stated that ‘[t]he tribe is organized under Articles
 27 of Association approved in July 1961 and later amended in 1973 and 1980,’ instead of stating
 28

1 that it was governed by its Constitution.” *Id.* at 26.

2 “Pala’s new Constitution purported to give Pala’s Executive Committee the power to
3 ‘amend and/or replace its existing Enrollment Ordinance with an Ordinance governing
4 adoption, loss of membership, disenrollment, and future membership.’ However, because the
5 Constitution was not properly adopted, the Executive Committee in fact lacked such power.”
6 *Id.* at 24.

7 “In 2001, during the Tribal elections, King Freeman – a descendant of Margarita Britten
8 and a personal enemy of Defendant Smith – was elected Vice Chairman of the Tribe.” *Id.* at
9 26. However, Defendant Smith declared Defendant Leroy [H.] Miranda the winner of the
10 election for Vice Chairman after “disallow[ing] a handful of votes....” *Id.* “That year,
11 Defendant Miranda became Vice-Chairman of the Executive Committee, Defendant Theresa
12 [J.] Nieto became Treasurer, and [D]efendant [Dion] Perez became and Executive Council
13 member. In 2005, Defendant [Kilma S.] Lattin became Secretary of the Executive
14 Committee.” *Id.* “Once these individuals came to power as members of Pala’s Executive
15 Committee, they enacted ordinances that gave the Executive Committee even more power.”
16 *Id.*

17 On December 12, 2005, Defendants Smith, Miranda, Nieto, Perez and Lattin
18 (“Defendants”), “as members of Pala’s Executive Committee, revised Pala’s Original
19 Enrollment Ordinance (the ‘12/12/05 Revised Enrollment Ordinance’). In Section 6 of the
20 12/12/05 Revised Enrollment Ordinance, Defendants gave themselves the exclusive power to
21 reevaluate approved membership applications....” *Id.* Section 6 of the 12/12/05 Revised
22 Enrollment Ordinance provides:

23 Should the Executive Committee subsequently find that an applicant or the
24 person filing the application on his/her behalf misrepresented or omitted facts
25 that might have made him/her ineligible for enrollment, his/her application shall
26 be reevaluated in accordance with the procedure for processing an original
application. Any decision of the Executive Committee that the member’s name
should be removed from the roll shall be subject to the affected member
appealing that decision as specified herein.

27 *Id.* at 26-27. “Defendants attempted to ensure that there would be no true oversight of their
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1 enrollment decisions by limiting any appeals of their enrollment decisions to only a
2 **recommendation** by the BIA and specifically precluding review of their decision by state and
3 federal courts....” *Id.* at 27 (quoting “Appeals of Eligibility Decisions Section 7.A.,C.” of the
4 12/12/05 Revised Enrollment Ordinance). “To prevent the BIA from nullifying their Revised
5 Enrollment Ordinance, Defendants further inserted the language in the Revised Enrollment
6 Ordinance that: ‘BE IT FURTHER KNOWN that this revised ordinance shall become effective
7 upon approval by the Executive Committee ... without further approval of the Secretary of
8 Interior or his or her delegated representative.’” *Id.* Through this process, “Defendants
9 ensured that they would continue to stay in power and maintain their reign of dominance over
10 the Tribe.” *Id.*

11 On July 22, 2009, “Defendants again revised Pala’s enrollment ordinance (the ‘7/22/09
12 Revised Enrollment Ordinance’).” *Id.* Although the 7/22/09 Revised Enrollment Ordinance
13 was “substantially similar to the 12/12/05 Revised Enrollment Ordinance,” it also established
14 “the requirements and regulations governing **membership**. Thus, Defendants purported to give
15 themselves power to govern membership – not merely new enrollments – in the Tribe.” *Id.*
16 In the 7/22/09 Revised Enrollment Ordinance, Defendants also “gave themselves the additional
17 power to add friends and political supporters as new Pala members at will, regardless of
18 whether they actually qualified to be members.” *Id.* at 29.

19 “Once Defendants secured their power through the foregoing changes in the Tribal
20 Constitution and the Revised Enrollment Ordinances on 7/22/09 and 12/12/05, Defendants
21 were able to transform Pala from a tribe governed by its adult members, or the Tribal Council,
22 to a tyrannical oligarchy....” *Id.* “[A]s Pala became flush with cash from the casinos, Pala
23 members began to raise questions.” *Id.*

24 Among other things, questions were raised concerning the propriety of Tribal
25 elections, Defendants’ financial dealings, Defendants’ motives for entering into
26 certain contracts on behalf of the Tribe, Defendants’ personal use of the Tribal
27 jet and other Tribal assets, and the construction of a raceway on the reservation
28 that had not been approved by the General Council. Indeed, certain Pala
members who had raised questions in January 2009 concerning the construction
of the raceway, who had asked to review the financials (and were told that they
were not available for review), and who brought up at a General Council

1 Meeting on June 9, 2010 the fact that Defendant Lattin should have been
2 automatically removed from office because he was a convicted felon at the time
3 he was nominated and ultimately took office, were banned by Defendants from
attending Pala's General Council meetings and denied their per capita payments
for one year.

4 *Id.*

5 In March of 2011, "Defendants caused Pala to withdraw its membership from the
6 Intertribal Courts of Southern California ('Intertribal Courts'). Pala members would then have
7 no recourse in tribal courts to address their grievances against Defendants once the Defendants
8 began their wave of disenrollments." *Id.* at 30. In order to withdraw membership from the
9 Intertribal Courts, a member tribe was required, pursuant to "the Inter-Governmental
10 Agreement," to provide 30 days written notice and have the tribal government pass a written
11 resolution approving such a withdrawal. *Id.* "Instead of providing official notice to withdraw
12 from the Intertribal Courts, however, Pala Secretary/Defendant Lattin merely sent a letter in
13 March 2011 to withdraw, and did not include any accompanying written resolution authorizing
14 Pala's withdrawal in his letter." *Id.* Defendant Lattin's letter of withdrawal "did not constitute
15 sufficient notice and was not valid pursuant to the Governing Agreement between Pala and the
16 Intertribal Courts...." *Id.* Defendants withdrew the Pala Tribe from the Intertribal Courts to
17 further "their scheme and conspiracy to deprive Plaintiffs of their civil rights and property
18 rights." *Id.* "The Intertribal Courts would have provided the parties with access to court
19 hearings and appeals, and the Intertribal Court's records would have been available to the
20 public.... Defendants made sure that Plaintiffs had no legal recourse." *Id.* at 30-31.

21 On May 2, 2011, Defendant/Tribal Secretary Lattin received Freeman's petition which
22 called for a "special meeting regarding the gross misconduct of defendant Miranda." *Id.* at 31.
23 The petition had enough signatures to mandate a special meeting. However, "according to a
24 letter from [Defendant] Lattin, many of the Tribal members who had signed the petition
25 subsequently requested to have their names taken off the petition such that it did not meet the
26 minimum signatures required." *Id.* The petition was "disqualified" by Defendants and a
27 special meeting was not held regarding the recall of Defendant Miranda. *Id.*

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1 “The recall effort by Freeman ... greatly upset Tribal Chairman/Defendant Smith.
2 During a heated General Council meeting, Smith said to Freeman, ‘your kids are off the rolls.’”
3 *Id.* On May 26, 2011, without prior notice to those affected, Defendants held a meeting and
4 decided to disenroll eight Britten descendants from the Pala Tribe. Three of these eight
5 members were relatives of Freeman. *Id.* “[O]n May 27, 2011, [D]efendant Smith falsely
6 assured some Pala members in a private conversation that rumors of disenrollments were not
7 true.” *Id.* “On June 1, 2011, the eight Britten descendants discovered through a letter from
8 [D]efendant Lattin that they had been disenrolled. According to Lattin’s letter, Pala’s
9 Enrollment Committee – which was really the Executive Committee made up of the
10 Defendants because Pala did not have a separate Enrollment Committee – had determined that
11 they were not eligible for enrollment and, as such, the Enrollment Committee ‘wishes to take
12 their names off the Tribal rolls effective June 1, 2011.’” *Id.* These eight individuals were
13 disenrolled “purportedly on the grounds that they did not have the 1/16 blood quantum
14 necessary to be Pala members because their ancestor, Margarita Britten, was not a 4/4 degree
15 Pala Indian.” *Id.* at 6. Their Tribal citizenship was terminated, including Tribal distributions
16 and benefits. *Id.* at 31-32. “The disenrollment and consequent disenfranchisement ... was done
17 without due process or equal protection, as required under Pala’s Constitution, Pala’s Original
18 and Revised Enrollment Ordinances, the Indian Civil Rights Act, and other laws and statutes.”
19 *Id.* at 32. These eight members received no notice, had no opportunity to be heard or present
20 evidence, and “were summarily disenrolled arbitrarily and capriciously.” *Id.* On June 29,
21 2011, these eight disenrolled members appealed to the BIA; however, their rights and benefits
22 had already been terminated by Defendants without waiting for the BIA’s recommendation.
23 *Id.* at 33.

24 “Whereafter, a flyer regarding the Executive Committee’s unjustified actions was
25 distributed.” *Id.* The flyer accused Defendant Smith of disseminating “OUTRIGHT LIES!”
26 about Britten’s descendants, and stated: “People want to know how can the
27 Executive/Enrollment Committee disenroll only eight family members and not the rest of
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1 family who are 1/16th descendants? This is how: [Defendant] Smith has turned this ‘General
2 Council’ tribe into a dictatorship.... We know that [Defendant Smith] and certain committee
3 members are abusing their leadership powers in an attempt to hurt King Freeman....” *Id.* at 34.

4 On September 30, 2011, Defendant Smith, “obviously angered by the contents of the
5 flyer,” sent a letter to all adult members of the General Council, which stated, in pertinent part:
6 “King Freeman has lived on his own lies for over 20 years as a member in our Band.... The
7 Pala Band of Mission Indians voting membership need to take a firm stand and stay strong as
8 an entity and not allow this to continue. He wants the rest of his family, who are 1/16
9 descendants, disenrolled!!! Don’t take my word for it, see his flyer!!!” *Id.* at 34-35.

10 On February 1, 2012, Defendant Smith and the other Defendants sent letters to 154
11 other Britten Descendants from Pala, “expelling” them from the Pala Tribe. *Id.* at 36. These
12 individuals constituted approximately 15 percent of the Tribe’s population. *Id.* These
13 individuals will no longer be able to vote in Tribal elections, participate in Tribal Council
14 meetings, or petition for the removal of any of the Defendants. *Id.* Their per capita benefits
15 ceased immediately. *Id.* “This occurred despite the fact [that] there is nothing in the Tribe’s
16 governing documents allowing Defendants to immediately terminate members’ rights and
17 benefits.” *Id.* at 36. These individuals did not receive due process. *Id.*

18 “Plaintiffs are some of the Britten Descendants who were disenrolled from the Tribe
19 by Defendants on June 1, 2011, and February 1, 2012.” *Id.* at 7.

20 “On February 17, 2012, 79 members of Pala’s General Council signed a petition to
21 request a special meeting of the [G]eneral [C]ouncil regarding the disenrollment of the Britten
22 Descendants.” *Id.* at 37. Defendant Smith “sent a letter to Tribal members claiming that the
23 ‘petition is circulating under misleading pretenses’ and that ‘[t]he merits of this petition are
24 false.’” *Id.* “[D]espite the petition having garnered more than enough votes for a Special
25 Meeting Pala’s Executive Committee rejected the petition and refused to call a meeting to
26 discuss the disenrollment of the Britten Descendants, claiming that ‘[the petition] violates the
27 Pala Constitution and Enrollment Ordinance.’” *Id.*

28

1 “In disenrolling Plaintiffs and other Britten Descendants, Defendants acted palpably
 2 and manifestly beyond their authority.” *Id.* at 7. “As the events leading up to the
 3 disenrollments demonstrate, these disenrollments were not about Defendants acting within
 4 their official capacity to ensure that rightful members belong in the Tribe, but were instead
 5 about Defendants’ abuse of power by using the disenrollments to retaliate against political
 6 enemies, keep themselves in their positions of power, and eliminate and punish members of
 7 a particular familial and racial lineage who had dared to challenge their authority.” *Id.*

8 Although Defendants purported to derive their power to disenroll the Britten
 9 Descendants from Pala’s Constitution and the Revised Enrollment Ordinances
 10 that they had enacted, Defendants in fact lacked such power. Among other
 11 things, Pala’s Constitution was not validly adopted because it was not approved
 12 by a majority of the voters in a duly called election, as required pursuant to
 13 Section 476(a) of the IRA and Pala’s Articles of Association[], which had
 14 preceded the Constitution....

15 Even assuming the validity of Pala’s Constitution and the Revised Enrollment
 16 Ordinances enacted thereunder by Defendants, Defendants exceeded their
 17 authority in disenrolling the Britten Descendants. Among other things, Pala’s
 18 Constitution empowered members of the Executive Committee to add or delete
 19 names from the Tribal rolls only for reasons of death, birth, or voluntary
 20 relinquishment of membership by Pala members. The disenrollments of the
 21 Britten Descendants did not fall under any of these criteria.... Because the
 22 membership of Plaintiffs and other Britten Descendants had already been
 23 approved, and they were listed on Pala’s membership roll, Defendants had no
 24 power to remove Plaintiffs and other Britten Descendants from Pala’s Tribal
 25 rolls.

26 Additionally, Defendants had no power to disenroll Plaintiffs and the other
 27 Britten Descendants on the basis of Margarita Britten’s blood degree. The 1913
 28 Pala Allotment Rolls, which serve as the original ‘base roll’ for the Tribe, list
 Margarita Britten as having ‘4/4’ degree Pala Indian blood.... [I]n the 1980’s, [the
 BIA] ruled that Margarita Britten was a full-blooded Pala Indian. The BIA has
 repeatedly reiterated its conclusion that this ruling *was final*. In addition, in
 1984, Pala’s General Council – comprised of all Pala members 18 years and
 older – voted on and approved a resolution to correct Margarita Britten’s blood
 degree to reflect that she was a full-blooded Pala Indian. Because Defendants,
 as members of Pala’s Executive Committee, were required to carry out the
 resolutions of the General Council, they *had to* accept that Margarita Britten was
 a full-blooded Pala Indian, and could not arbitrarily reach a different conclusion
 on their own to suit their personal agenda.

Further, Defendants lacked power to decide on the disenrollment of the Britten
 Descendants because at least two of the Defendants were charged and pled
 guilty to crimes in office....

In addition, Defendants did not have authority to disenroll Plaintiffs because at
 a General Council meeting on January 9, 2002, the Tribe approved a moratorium
 on membership requirements for ten (10) years. As such, Defendants were
 restricted from taking any action with respect to any tribal member’s status or

1 implementing enrollment ordinances that gave themselves power over the Tribal
2 membership. Further, since the BIA had final approval over membership
3 applications as of 2002, the BIA had the final say on enrollments, not
4 Defendants.

5 Moreover, Defendants exceeded the power granted them by the Tribe because,
6 in extinguishing Plaintiffs' citizenship from the Tribe, Defendants violated the
7 rights afforded to Plaintiffs under Pala's governing laws. Even assuming the
8 validity of Pala's Constitution, the Constitution mandates that '[t]he Pala Band
9 shall provide all persons with due process and equal protection of the law
10 required by the Indian Civil Rights Act.' ... The Indian Civil Rights Act, enacted
11 by Congress in 1968, made many of the guarantees of the Bill of Rights
12 applicable to Indian tribes in order to prevent abuses that many tribal members
13 had endured from the 'sometimes corrupt, incompetent, or tyrannical tribal
14 officials.' However, in violation of Pala's Constitution and the Indian Civil
15 Rights Act, Plaintiffs were not provided with any due process or equal
16 protection when they were disenrolled from the Tribe....

17 *Id.* at 7-10.

18 "Defendants conspired to ensure that Plaintiffs and other disenrolled Britten
19 Descendants would have no recourse in any court or on appeal in connection with the wrongful
20 and illegitimate disenrollments that violated due process and civil rights...." *Id.* at 10.

21 Just months before beginning their wave of disenrollments ... Defendants caused
22 Pala to withdraw its membership from the [Intertribal Court].... Defendants had
23 already taken away any meaningful appellate review of their enrollment
24 decisions when they enacted Pala's Revised Enrollment Ordinances to provide
25 that ... the BIA could not compel the Executive Committee to change or reverse
26 its decision but could only make a recommendation to the Executive Committee
27 as to whether it should uphold or change its decision....

28 *Id.* at 10. "Defendants' scheme and conspiracy to disenroll Plaintiffs and other Britten
Descendants from the Tribe was willful and malicious. Defendants' disenrollment of Plaintiffs
was not about defining Pala's membership, as Pala's membership requirements had not
changed since the Tribe formally organized. Instead, Defendants' actions arose from their
desire to eliminate political and personal enemies and for personal gain." *Id.* at 11.

"Defendants stood to receive additional monetary distributions from the Tribe and would
continue to stay in power to engage in questionable financial transactions without scrutiny."

Id. "There are no tribal remedies to exhaust, and there is no process for review of Defendants'
conduct. Plaintiffs, therefore, seek remedy from this Court." *Id.*

Plaintiffs seek the following relief against Defendants as individual tribal officials: (1)
"a declaratory judgment that the Defendants' improper disenrollment of Plaintiffs constitutes

violations of their civil rights”; (2) “a permanent injunction to invalidate Defendants’ wrongful disenrollment actions”; (3) “an order declaring the wrongful disenrollment of Plaintiffs by Defendants to be null and void”; (4) “an order requiring Defendants to pay back the money and lost benefits that were withheld and/or taken away from Plaintiffs while they were wrongfully disenrolled”; (5) “an order for compensatory damages against the Defendants for violations of Plaintiffs’ rights in an amount appropriate to the proof adduced at trial”; (6) “an order for punitive damages against Defendants for causing, approving and/or ratifying the disenrollment of the Plaintiffs, and for the consequential loss of money, property, and heritage”; (7) reasonable attorneys’ fees and costs; and (8) “other and further relief, including all appropriate equitable relief, as this Court may deem just and proper.” *Id.* at 61-62.

Plaintiffs allege that this Court has subject-matter jurisdiction over the federal law claims pursuant to 42 U.S.C. § 1985(3), 42 U.S.C. § 1981, 28 U.S.C. § 1331, and 28 U.S.C. § 1343(a). *Id.* at 12. Plaintiffs allege that this Court has supplemental jurisdiction over the claims arising under common law pursuant to 28 U.S.C. § 1367. *Id.*

ANALYSIS

I. Applicable Standard

Motions pursuant to Federal Rule of Civil Procedure 12(b)(1) assert a lack of subject-matter jurisdiction over the dispute, and may be either a facial attack on the sufficiency of the pleadings or a factual attack on the basis for a court’s jurisdiction. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000).

In determining the presence or absence of federal jurisdiction, the court applies the “‘well-pleaded complaint rule,’ which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” *Cal. ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 838 (9th Cir. 2004) (quoting *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987)). When assessing subject-matter jurisdiction, the court assumes the truth of all allegations in the complaint. *See Castaneda v. United States*, 546 F.3d 682, 684 n.1 (9th Cir. 2008). “If jurisdiction is lacking at the outset, the district court has no power to do anything with the case except dismiss.” *Id.*

1 **II. Contentions of the Parties**

2 Defendants contend that the Complaint must be dismissed pursuant to Federal Rule of
3 Civil Procedure 12(b)(1) on the grounds that the Pala Tribe’s sovereign immunity bars this
4 Court from exercising subject-matter jurisdiction. Defendants contend that this controversy
5 involves tribal membership determinations falling “within the exclusive province of the Tribe,”
6 and that Plaintiffs cannot avoid the implications of tribal sovereign immunity by bringing these
7 claims against tribal officials as opposed to the Tribe itself. (ECF No. 17-1 at 15).

8 Plaintiffs contend that this Court has subject-matter jurisdiction. Plaintiffs contend that
9 “Defendants are individuals who exceeded their authority as Tribal officials by using
10 enrollment as an excuse to retaliate against Plaintiffs.” (ECF No. 18 at 20). Plaintiffs assert:
11 “This is an important distinction because ... the Tribe – the true sovereign – had previously
12 voted on and determined that Plaintiffs’ ancestor, Margarita Britten, was a full-blooded Pala
13 Indian. Thus, Defendants intentionally subverted the will of the sovereign by unilaterally
14 declaring that Margarita Britten was not a full-blooded Indian.” *Id.* at 19.

15 **III. Discussion**

16 “Sovereign immunity limits a federal court’s subject matter jurisdiction over actions
17 brought against a sovereign. Similarly, tribal immunity precludes subject matter jurisdiction
18 in an action against an Indian tribe.” *Alvarado v. Table Mtn. Rancheria*, 509 F.3d 1008, 1015-
19 16 (9th Cir. 2007). “As a matter of federal law, an Indian tribe is subject to suit only where
20 Congress has authorized the suit or the tribe has waived its immunity.” *Kiowa Tribe of Okla.*
21 *v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998); *see also Oklahoma Tax Comm. v. Citizen Band*
22 *Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 505-06 (1991) (reaffirming the “longstanding
23 doctrine of tribal sovereign immunity ... in order to promote Indian self-government,
24 self-sufficiency, and economic development....”).

25 “Tribal sovereign immunity ‘extends to tribal officials when acting in their official
26 capacity and within the scope of their authority.’” *Cook v. AVI Casino Enters., Inc.*, 548 F.3d
27 718, 727 (9th Cir. 2008) (quoting *Linneen v. Gila River Indian Cmty.*, 276 F.3d 489, 492 (9th
28 Cir. 2002)). When tribal officials act “beyond their authority, they lose their entitlement to the

immunity of the sovereign.” *Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F. 2d 1269, 1271 (9th Cir. 1991) (citing *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978)).

“Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers.” *Santa Clara Pueblo*, 436 U.S. at 58. “When the suit is brought only against state officials, a question arises as to whether that suit is a suit against the State itself.... The Eleventh Amendment bars a suit against state officials when ‘the state is the real, substantial party in interest.’”³ *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101-02 (1984) (quoting *Ford Motor Co. v. Dep’t of Treasury*, 323 U.S. 459, 464 (1945)). “The general rule is that relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter.” *Hawaii v. Gordon*, 373 U.S. 57, 58 (1963) (per curiam).

In *Maxwell v. County of San Diego*, — F.3d —, 10-56671, 2013 WL 542756 (9th Cir. Feb. 14, 2013), family members of a shooting victim brought an action in federal court against a tribal fire department and its paramedics, alleging that the individual paramedics unreasonably delayed in obtaining medical treatment for the victim. The Court of Appeals for the Ninth Circuit employed the “remedy-focused” analysis described above, concluding that the paramedics did not enjoy tribal sovereign immunity “because a remedy would operate against them, not the tribe.” *Maxwell*, 2013 WL 542756 at *10. The Court of Appeals explained:

“The general bar against official-capacity claims ... does not mean that tribal officials are immunized from individual-capacity suits *arising out of* actions they took in their official capacities....” *Native Am. Distrib. Co. v. Seneca-Cayuga Tobacco Co.*, 546 F.3d 1288, 1296 (10th Cir. 2008) (emphasis in original). “Rather, it means that tribal officials are immunized from suits brought against

³“Since the Supreme Court’s decision in *Ex parte Young*, 209 U.S. 123 (1908), courts have recognized an exception to the Eleventh Amendment [sovereign immunity] bar for suits for prospective declaratory and injunctive relief against state officers, sued in their official capacities, to enjoin an alleged ongoing violation of federal law.” *Agua Caliente Band of Cahuilla Indians v. Hardin*, 223 F.3d 1041, 1045 (9th Cir. 2000). In deciding whether the relief sought is prospective or retrospective, courts must “look to the substance rather than to the form of the relief sought.” *Papasan v. Allain*, 478 U.S. 265, 279 (1986).

In this case, Plaintiffs seek monetary, declaratory and injunctive relief that would restore them to the position they were in before they were disenrolled. Accordingly, the Court concludes that Plaintiffs seek retrospective relief and that the doctrine of *Ex parte Young* is inapplicable to this case.

1 them *because* of their official capacities—that is, because the powers they
2 possess in those capacities enable them to grant the plaintiffs relief on behalf of
3 the tribe.’ *Id.* (emphasis in original).

4 *Id.* at *11-*12; *see also Shermoen v. United States*, 982 F.2d 1312, 1320 (9th Cir. 1992)
5 (explaining that in a suit brought against tribal officials, courts must consider whether “the
6 judgment sought would expend itself on the public treasury or domain, or interfere with the
7 public administration, or if the effect of the judgment would be to restrain the [sovereign] from
8 acting, or compel it to act”).

9 The *Maxwell* court distinguished the facts of its case from *Hardin v. White Mountain*
10 *Apache Tribe*, 779 F.2d 476 (9th Cir. 1985), a case where the plaintiff sued tribal council
11 members for allegedly ordering tribal police to eject plaintiff from tribal land. *Id.* at 478. The
12 Court of Appeals for the Ninth Circuit in *Hardin* concluded that the council members “had
13 act[ed] in their representative capacity and within the scope of their authority.” *Id.* at 479.
14 “Holding the defendants [in *Hardin*] liable for their legislative functions would ... have
15 attacked the very core of tribal sovereignty.” *Maxwell*, 2013 WL 542756 at *12.

16 In *Imperial Granite*, an Indian tribe denied plaintiff access to a quarry that was owned
17 by plaintiff, a non-Indian, and located on the tribe’s reservation. Plaintiff sued the tribe and
18 the tribe’s officials for trespass, nuisance, and violation of the Indian Civil Rights Act (25
19 U.S.C. §§ 1301 et seq.). *Imperial Granite Co.*, 940 F. 2d at 1272. The Court of Appeals for
20 the Ninth Circuit concluded that sovereign immunity extended to the tribal officials because
21 there was “no ground stated in the complaint for finding that the tribal official defendants acted
22 beyond the scope of their lawful authority.” *Id.* In reaching that conclusion, the Court of
23 Appeals stated:

24 As far as we are informed in argument, the only action taken by th[e] officials
25 was to vote as members of the Band’s governing body.... Without more, it is
26 difficult to view the suit against the officials as anything other than a suit against
27 the Band. The votes individually have no legal effect; it is the official action of
28 the Band, following the votes, that caused Imperial’s alleged injury....

29 *Id.* at 1271.

30 In this case, Plaintiffs allege that Defendants – elected members of the Pala Tribe’s
31 Executive Committee – passed a revised enrollment ordinance, which “empowered members

1 of the Executive Committee to add or delete names from the Tribal rolls....” (ECF No. 1 at 8).
 2 Plaintiffs allege that Defendants made a determination that Margarita Britten was not a full-
 3 blooded Pala Indian. *See id.* at 5-6, 15-16, 36-38. Plaintiffs allege that Defendants disenrolled
 4 Plaintiffs, who are descendants of Britten, on the grounds that Plaintiffs lacked the requisite
 5 blood quantum for tribal membership. *See id.* Plaintiffs allege that “Defendants, as members
 6 of Pala’s Executive Committee, were in positions of power and control over members of the
 7 Tribe.” *Id.* at 16. Plaintiffs seek compensatory and punitive damages from Defendants for
 8 allegedly conspiring to wrongfully disenroll Plaintiffs. Plaintiffs seek a permanent injunction
 9 “to invalidate Defendants’ wrongful enrollment actions” as well as declaratory relief,
 10 “declaring the wrongful disenrollment ... to be null and void” and in “violation of their civil
 11 rights.” *Id.* at 62.

12 Based upon the “essential nature and effect” of the injunctive and declaratory relief
 13 sought in the Complaint, the Court finds that the Pala Tribe is the “real, substantial party in
 14 interest” in this case. *Maxwell*, 2013 WL 542756 at *11. Only the Pala Tribe, whose
 15 sovereign immunity is unquestioned, could satisfy the relief sought in the Complaint, i.e. the
 16 reinstatement of Plaintiffs as members of the Tribe. Defendants, as members of the Executive
 17 and Enrollment Committees, “possess the power” to grant Plaintiffs that relief “on behalf of
 18 the tribe.” *Id.* Accordingly, the Court finds that this action, as alleged, is fundamentally one
 19 against the Pala Tribe and that Plaintiffs have sued the individual Defendants in their official
 20 capacities.

21 Although Plaintiffs challenge the motives and the findings of the Committee’s
 22 individual members, the Complaint alleges that the Committee, acting as a governing body,
 23 disenrolled Plaintiffs. “Without more, it is difficult to view the suit against the officials as
 24 anything other than a suit against the Band.” *Imperial Granite Co.*, 940 F. 2d at 1272 (“The
 25 votes individually have no legal effect; it is the official action of the Band, following the votes,
 26 that caused Imperial’s alleged injury.”); *see also Maxwell*, 2013 WL 542756 at *12 (“Holding
 27 the defendants [in *Hardin*] liable for their legislative functions would ... have attacked the very
 28 core of tribal sovereignty.”). However, unlike *Imperial Granite*, Plaintiffs in this case have

1 alleged that the revised enrollment ordinance, which confers disenrollment authority to the
 2 Executive Committee, is unconstitutional and that Defendants acted in excess of their statutory
 3 authority.⁴

4 “It is true that officer’s suits have been permitted in the past when ‘the statute or order
 5 conferring power upon the officer to take action in the sovereign’s name is claimed to be
 6 unconstitutional.’” *Shermoen*, 982 F.2d at 1320 (quoting *Larson v. Domestic & Foreign*
 7 *Corp.*, 337 U.S. 682, 690 (1949)). However, “a suit may fail, as one against the sovereign,
 8 even if it is claimed that the officer being sued has acted unconstitutionally or beyond his
 9 statutory powers, if the relief requested cannot be granted by merely ordering the cessation of
 10 the conduct complained of but will require affirmative action by the sovereign or the
 11 disposition of unquestionably sovereign property.” *Larson*, 337 U.S. at 691 n.11.

12 The Court finds that the relief sought in this Complaint would “require affirmative
 13 action by the sovereign,” i.e. the Pala Tribe’s re-enrollment of Plaintiffs. *Larson*, 337 U.S. at
 14 691 n.11. Such a remedy would operate against the Pala Tribe, impermissibly infringing upon
 15 its sovereign immunity. *See generally Lewis v. Norton*, 424 F.3d 959 (9th Cir. 2005) (“Courts
 16 have held that tribal immunity bars suits to force tribes to comply with their membership
 17 provisions, as well as suits to force tribes to change their membership provisions.”(citations
 18 omitted)); *Santa Clara Pueblo*, 436 U.S. at 72 n.32 (“A tribe’s right to define its own
 19 membership for tribal purposes has long been recognized as central to its existence as an
 20 independent political community.... Given the often vast gulf between tribal traditions and
 21 those with which federal courts are more intimately familiar, the judiciary should not rush to
 22 create causes of action that would intrude on these delicate matters.”); *Imperial Granite Co.*,
 23 940 F. 2d at 1272 (“[A] tribe’s immunity is not defeated by an allegation that it acted beyond
 24 its powers.”). Based upon the factual allegations of the Complaint and the nature and effect

26 ⁴Plaintiffs allege that the revised constitution was never properly adopted, and that, as
 27 a result, the original articles of incorporation are still in effect. Plaintiffs allege that under the
 28 articles of incorporation, Defendants would not have been authorized to disenroll Plaintiffs.
 This issue is currently before the Bureau of Indian Affairs. *See Aguayo v. Salazar*, No. 12-CV-
 551-WQH (S.D. Cal. Nov. 19, 2012) (order dismissing complaint for failing to allege the
 existence of a final agency action that is subject to review under the APA).


1 of the relief sought, the Court concludes that Defendants acted in their official capacities and
2 within the scope of their authority when they made the membership determinations at issue in
3 this case.

4 CONCLUSION

5 Pala is a separate sovereign and, based upon the factual allegations of the Complaint
6 and the relief requested, its Tribe enjoys immunity that extends to the Defendants named in this
7 case. Congress has not authorized this action and Plaintiffs have failed to adequately allege
8 that the Tribe has waived its immunity. This action must be dismissed. *See Kiowa Tribe of*
9 *Okl.*, 523 U.S. at 754 (“As a matter of federal law, an Indian tribe is subject to suit only where
10 Congress has authorized the suit or the tribe has waived its immunity.”).

11 IT IS HEREBY ORDERED that the Amended Motion to Dismiss (ECF No. 17) filed
12 by Defendants is GRANTED. The Complaint is dismissed on the basis of sovereign immunity.

13 DATED: March 11, 2013

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15 **WILLIAM Q. HAYES**
16 United States District Judge
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